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EDITORIAL CORRESPONDENCE

San Francisco, Cal.
January 21, 1919.

Editor, California Law Review:

On reading the last number of the "California Law Review", which came out last month, I note that on page 135 it is said:

"The case of Marysville Woolen Mills vs. Smith states the almost universal rule that courts of general jurisdiction, civil or criminal, will not take notice of the ordinances of a municipality, but that such ordinances must be pleaded and proved."

On examination of the case, I find nothing in it which lays down the rule that municipal ordinances must always be pleaded, and on study of the authorities, I find that municipal ordinances need only be pleaded where the cause of action is based entirely on the municipal ordinance. Where the ordinance is only evidentiary, as was apparently the case in the decision cited, it is

not necessary to plead the ordinance. You will see that this rule is supported by the following cases: *Cragg vs. Los Angeles Trust Co.*, 154 Cal. 663 (See full note on this subject in 16 Am. & Eng. Cas. 1061, 1064); *Fresno Traction Co. vs. A. T. & S. Fe Ry. Co.*, 175 Cal. 358; *Lininger vs. San Francisco etc. R. R. Co.*, 18 Cal. App. 411; and *Stadler vs. Pacific Electric Ry. Co.*, 23 Cal. App. 571.

I am taking the liberty of calling your attention to this matter in view of your invitation in the first number of the 7th volume to readers to communicate such matters to you, when noticed.

Yours truly,

Delger Trowbridge.

Comment on Recent Cases

CORPORATIONS: MEANING OF "CAPITAL STOCK" IN STATUTES.—The case of *Merchants and Insurers Reporting Co. v. Youtz*¹ raises the question as to the meaning of the phrase, "capital stock," and its proper use. When used in its true, technical sense it denotes the aggregate of the par value of all the shares of stock at the time of incorporation. It is the amount fixed by the corporate charter to be paid in by the stockholders, either at the time of incorporation or later.² It is to be distinguished from the property of the corporation.³ The latter may be partly composed of franchises, good will and surplus, which are no part of the capital stock,⁴ which is fixed in amount by the charter. The value of the property of a corporation fluctuates with its success or failure. Although part or all of the capital stock may have been invested in property and is thus represented by it, a great part of the property of the corporation may have come from other sources.

The capital of a corporation is its actual holdings in property or money on which it conducts its business.⁵ The capital may be equal in amount and value to the capital stock but in all probability

¹ (1918) 27 Cal. App. Dec. 889.

² *Cook, Corporations*, §§ 8, 191. *State v. The Morristown Fire Association* (1851) 23 N. J. Law 195; *Person and Riegel Co. v. Lipps* (1907) 219 Pa. 99, 67 Atl. 1081.

³ *State v. The Morristown Fire Association*, *supra*, n. 2; *Tennessee v. Whitworth* (1885) 117 U. S. 129, 29 L. Ed. 830, 6 Sup. Ct. Rep. 645.

⁴ *People ex. rel. Union Trust Co. v. Coleman* (1891) 126 N. Y. 433, 27 N. E. 818, 12 L. R. A. 762.

⁵ *Person and Riegel Co. v. Lipps*, *supra*, n. 2.